

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 8TH DECEMBER 2006 / 17TH AGRAHAYANA 1928

Crl.MC.No. 4734 of 2003(B)

CC.67/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, KANNUR
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PETITIONER: ACCUSED

K.SREE HARIDAS S/O. LATE T.K.NAIR,
MANAGING PARTNER, M/S. INDIAN TEXTILES,
P.O.CHIRAKKAL.R.S., KANNUR 670 001, RESIDING AT
LAKSHMI SREE, NEAR KADALAYI SREE KRISHNA TEMPLE,
P.O. CHIRAKKAL, KANNUR.

BY ADV. SRI.N.NANDAKUMARA MENON
SRI.K.VINODKUMAR
SRI.P.K.MANOJKUMAR
SMT.RESMI RAMACHANDRAN

RESPONDENTS: COMPLAINANT

1. SMT. KEEZHATTOOR PADMINI W/O. B.S. NAIR,
AGED 56 YEARS, FLAT NO.P-I PRATHAMESH",
BEHIND TATA PRESS, BOMBAY DYEING COMPOUND,
PRABHADEVI-MUMBAI 400 025, NEW CAMPING AT
"PUTHALATH HOUSE" BEHIND RAILWAY QUARTERS,
P.O.CHIRAKKAL R.S., KANNUR 670 011
2. THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.JIKKU JACOB
SRI.P.DEEPAK

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 08/12/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

Crl.M.C.No.4734 of 2003

Dated this the 8th day of December 2006

O R D E R

The petitioner/accused is the brother of the complainant. Cognizance has been taken of the offences punishable under Sections 406, 420 and 468 I.P.C. The crux of the allegation is that the complainant and the accused, along with other siblings and their father were partners of a textile firm. When the father was alive, the complainant had left some blank signed cheques with the father with the intention that he can make use of them, if necessary. These cheques were handed over to the father so that he can use them only if need arose. These cheques were allegedly handed over to the father of the complainant in 1979. Father expired in 1985. The complainant and her husband were residing permanently in Mumbai. They came down. The petitioner was continuing the affairs with the firm. The complainant and her husband allegedly enquired about the blank signed cheques. They were not traceable, was the reply. The complainant and her husband went back to Mumbai. The petitioner was managing the affairs of the firm. In 1993, the complainant and her husband, after the retirement of the complainant's husband, returned to their native place. The complainant realised later on, that the blank signed cheques given by her to her father had been misutilised by the petitioner by forging the cheques, writing his own name as the payee and withdrawing amounts conveniently from time

to time keeping the complainant in the dark about those transactions. She filed a complaint. The police conducted investigation. They referred the complaint as false. Dissatisfied, the complainant came to court and filed a private complaint. In the private complaint, the learned Magistrate examined the complainant and her husband. It is thereafter, that process was issued against the petitioner.

2. Without appearing before the learned Magistrate, the petitioner has rushed to this court with this application under Section 482 Cr.P.C. He prays that the prosecution initiated against him may be quashed.

3. What are the reasons? The learned counsel for the petitioner submits that the allegations even if accepted in toto do not constitute any offence. It is further alleged that the allegations are patently false. It is, in these circumstances prayed that the complaint may be quashed.

4. The learned counsel for the respondent opposes the application for quashing the proceedings. He submits that at the threshold, the learned Magistrate is expected only to ascertain whether there are "sufficient grounds to proceed" against the accused. Possible defences need not be considered. The acceptability of the materials tendered need not also be gone into in detail. Threshold satisfaction contemplated, is only the satisfaction that there is sufficient ground to proceed. More than sufficient grounds are

available to persuade the learned Magistrate to proceed with the matter. The learned counsel for the complainant points out that the accused in his reply, Annexure C, has not denied the fact that the amounts, as per the cheques were collected by him. The only explanation appears to be that the same have been properly accounted. The cheques "are drawn at your client's instance and use and not for my client's purpose" is the specific and definite contention.

5. The refer report filed by the police is relied upon heavily. On going through the refer report, which is produced as Annexure D, it does not give the court the satisfaction that a serious consideration of the crucial question was undertaken by the police before referring the complaint. Attempts made to rely on the refer report Annexure D, cannot also be of help to the petitioner.

6. The contention that the allegations, even if accepted, do not reveal any offence, cannot obviously be accepted. This court cannot certainly endorse the alleged conduct of a son, taking blank signed cheques handed over to the father by his sister and misusing them to siphon out funds from the sister's account. Certainly, that alleged conduct if proved cannot be held not to amount to any offence. I do not intend to express any authentic opinion on the disputed questions of fact. Suffice it to say that I am satisfied that there is no satisfactory and compelling reasons which can persuade this court to

invoke the extraordinary inherent jurisdiction under Section 482 Cr.P.C to prematurely terminate the proceedings initiated against the petitioner.

7. It is certainly for the petitioner to raise all his contentions and claim discharge under Section 245(1) or 245(2) Cr.P.C and acquittal later if he is not discharged. The dismissal of this Criminal Miscellaneous Case will not in any way fetter the rights of the petitioner to raise all appropriate contentions before the learned Magistrate at appropriate stages.

8. The learned counsel for the petitioner submits that the very purpose of the complaint is vexation and the petitioner will be harassed if his personal appearance is insisted on all dates of posting. I find no reason why in the facts and circumstances of this case, the learned Magistrate must ritualistically insist on the personal appearance of the petitioner on all dates of posting. The petitioner can certainly apply for exemption and I find no reason why the learned Magistrate would not consider the application on merits and expeditiously, in accordance with law.

9. With the above observations, this Criminal Miscellaneous Case is dismissed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006